

Exhibit 4

Volume 1
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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NEXSAN TECHNOLOGIES,
INCORPORATED,

Plaintiff and Counterclaim-Defendant,
vs. CA No. 1:16-CV-10847-WGY
EMC CORPORATION,
Defendant and Counterclaim-Plaintiff.
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30(b)6 VIDEOTAPE DEPOSITION

of

EMC CORPORATION
BY BRIAN P. HENDERSON

Fish & Richardson, P.C.
One Marina Park Drive
Boston, Massachusetts 02110

Tuesday, September 27, 2016
9:30 a.m.

Reporter: Carol A. Fierimonte, CSR

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1 A. We have VNX. We have VNXE. We have Unity.
2 And I have started to do some work on the
3 Dell Compellent product line.

4 Q. And you said that you market them. Can you
5 just explain what that means to a
6 layperson?

7 A. Sure. We promote internally and
8 externally the latest products and
9 features to the marketplace, whether it be
10 through advertising, emails, PowerPoints,
11 and sessions at conferences is probably
12 the big --

13 Q. Why do you need to promote things
14 internally?

15 A. To get them prepared for what is coming
16 next.

17 Q. Who is them?

18 A. That would include our internal sales
19 teams, system engineers, and in some cases
20 partners we treat as an internal partner.

21 Q. What do you mean by partners?

22 A. People who resell our products.

23 Q. Okay. Can you give me an example?

24 A. Sure. We have Presidio down the street,

1 relationship to EMC?

2 MR. HOSP: Object to the form.

3 A. They work with EMC. If you said it at
4 that level, I would say they work with EMC
5 in some way unless you got more specific.

6 Q. Does a company have to apply to be an EMC
7 partner?

8 A. To the best of my knowledge, there is a
9 program. I am not familiar with the
10 details of the application process.

11 Q. Do EMC partners have to enter into
12 agreements with EMC to become partners?

13 MR. HOSP: Object to the form.

14 A. To the best of my knowledge, yes.

15 Q. Okay. Let's talk a little bit about
16 Unity. Are you familiar with a product
17 called EMC Unity?

18 A. Yes.

19 Q. And what is your understanding of what EMC
20 Unity and the EMC Unity product family is?

21 A. It is a storage device. It has multiple
22 deployment types. It can be an all flash
23 system, hybrid system, and available as
24 software only.

1 what your involvement was in its
2 marketing?

3 A. Sure. I was responsible for creating the
4 message to describe what Unity is,
5 disseminating that to people, and that is
6 essentially it. It is create the content
7 and share.

8 Q. When did you first hear the name Unity
9 used within EMC?

10 A. Prior to 2014.

11 Q. Do you remember the conversation?

12 A. It was on a blog post.

13 Q. Do you remember who wrote the blog post?

14 A. I do.

15 Q. Who was it?

16 A. It was Chad Sakac.

17 Q. Okay. And it was prior to 2014?

18 A. No. It was in 2014.

19 Q. Okay. So who told you that you would be
20 working on Unity, what we now know as
21 Unity?

22 MR. HOSP: Objection to the form.

23 A. Who told me? When I first started working
24 on it, it was just the next midrange

1 Q. Uh-huh.

2 A. We knew that the next product was coming
3 soon. That is --

4 Q. Did the product have a name? You said the
5 next product. Did that next product have
6 a name at that time?

7 A. At that time internally we referred to
8 that as Unity.

9 Q. What is Unity.Next?

10 A. It is just something we used to refer to
11 Unity.

12 Q. Why?

13 A. On some occasions we were asked to
14 essentially obfuscate the name.

15 Q. Do you know why?

16 A. Yes. There were people new to the group
17 that weren't aware that the name had
18 already been used publicly.

19 Q. Okay. But why obfuscate it?

20 A. I think they were concerned about letting
21 the name out to the public, when in fact
22 we already had.

23 Q. Did you share those concerns?

24 A. Yes.

1 Q. You nodded your head. Did you mean to say
2 yes?

3 A. There were occasions at which people tried
4 to tack on something, but they were never
5 instructed by me to do so.

6 Q. Do you know why they tried to tack on
7 something?

8 A. Not exactly.

9 Q. What was Project Unity?

10 A. It is the same thing. It is all Unity.

11 Q. Do you typically use the word "project" in
12 front of terms when a product is in
13 development?

14 A. Can you clarify? Do you -- do I or does
15 EMC?

16 Q. I guess EMC. Does EMC?

17 A. Okay. I guess the answer would be
18 sometimes.

19 Q. Do you know why that happens?

20 A. Typically, there is a code name sometimes
21 with a project. This case, it was a code
22 name that became the actual name. Unity
23 became the name.

24 Q. Why does EMC use code names?

1 A. It is another way to describe the product.

2 Q. But why not just say the product name?

3 Why use a code name?

4 MR. HOSP: Objection to the form.

5 A. Why is there a code name? The code name
6 would be used for another way to describe
7 the name of the product.

8 Q. Are code names used throughout this
9 industry?

10 A. At times, yes.

11 Q. So it is common for companies that make
12 storage products to use code names to
13 refer to products that are in development?

14 MR. HOSP: Objection to the form.

15 A. As far as my experience is concerned, I
16 have seen usage of code names, yes.

17 Q. What is the reason to use a code name?

18 MR. HOSP: Objection to the form.

19 A. It is another name to refer to the product
20 as.

21 Q. Right. But why, why do you need another
22 name?

23 A. Typically, you are trying to not share
24 that name.

1 days, it is senior executives.

2 Q. Do you know when the naming committee
3 ceased to be?

4 A. Maybe 2003.

5 Q. Okay. Do you know who selected the name
6 for EMC Unity?

7 MR. HOSP: Objection to the form.

8 A. To the best of my knowledge, it was Jeremy
9 Burton.

10 Q. Who is that?

11 A. He is currently the Chief Marketing
12 Officer of Dell EMC.

13 Q. So your boss?

14 A. Boss's boss -- boss's boss, something like
15 that.

16 Q. A couple bosses up the ladder?

17 A. Yeah, yeah, yeah, yeah.

18 Q. Okay. And do you know when he selected
19 the name Unity?

20 MR. HOSP: Object to the form.

21 A. My best recollection is February 2016.

22 Q. Okay. How did you become aware of that
23 selection?

24 A. It was a conversation with Jeff Boudreau,

1 who is the GM of the midrange storage
2 product team.

3 Q. Okay. You were in the conversation with
4 Jeff and Jeremy?

5 A. No.

6 Q. No. Jeff and Jeremy had a conversation
7 together, and then Jeff told you?

8 A. Yes.

9 Q. Okay. And then you told the members of
10 your team, is that right?

11 A. Yeah.

12 Q. Do you remember what you said?

13 A. I said Unity, which is the name, is now
14 the name. I mean it was a strange thing
15 because we had been referring to it as
16 Unity for quite some time already.

17 Q. Did you think it was strange that he told
18 you that then?

19 A. It was the first time I have witnessed
20 that name at which we referred to
21 internally as a code name called Unity
22 become the name.

23 Q. Usually that doesn't happen?

24 A. Again, I don't know. From what I have

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1 seen, it is fairly uncommon.

2 Q. Were there other candidate names for this
3 product?

4 A. There were a few that came up.

5 Q. Do you remember any of them?

6 A. I remember two.

7 Q. What were they?

8 A. One was FlexIO. One was Simple Box.

9 Q. Is that one X or two?

10 A. I don't know.

11 Q. Okay. Do you remember when FlexIO and
12 Simple Box were, let's say, out of the
13 running?

14 A. I would say what we did is gave it a shot
15 to see if it would stick, and I don't
16 think anyone ever actually took it serious
17 that those names were really contenders.

18 Q. At around what time did that happen?

19 A. It was all right around that January,
20 February timeframe.

21 Q. Okay. So you said you gave it a shot to
22 see if it would stick. Does that mean
23 market testing?

24 A. It was socializing internally.

1 MR. ABREU: Okay.

2 Q. Let's talk briefly about EMC. Who are
3 EMC's typical customers for its midrange
4 storage products?

5 A. IT departments.

6 Q. Across every industry?

7 A. Yeah.

8 Q. Is it safe to say you have tens of
9 thousands of customers?

10 A. Yup.

11 Q. How are the majority of the products sold
12 to these customers?

13 MR. HOSP: Object to the form.

14 A. Tactically or strategically, like what are
15 you getting at?

16 Q. Well, typically, you know, some products
17 get sold in a store. I am assuming that
18 is not the case with EMC's midrange
19 storage products. Can you just explain a
20 little bit about how the customer would
21 obtain the product? Do they have to work
22 with a distributor?

23 A. Sure. Okay. I can explain that. Our sales
24 process is pretty lengthy. It starts with,

1 a lot of cases, a roadmap presentation. We
2 do -- we have done these for years at
3 conferences, giving them, you know, an
4 update on what is next.

5 Q. So these are current customers that you
6 would give an update on what is next to --

7 A. Not always. The sales rep wants a
8 presentation, wants a roadmap review, we
9 will give it to them.

10 Q. What is the purpose?

11 A. The end goal is to sell something to them.
12 We want to show them the strategy.

13 Q. So a preview of what is coming, is that a
14 fair characterization of what a roadmap
15 is?

16 A. Sometimes. Sometimes it includes content
17 that is available today.

18 Q. Okay. So that is -- that is activity that
19 you do. Can you please go on and explain
20 the rest of the process?

21 MR. HOSP: Object to the form.

22 A. There is a lot of communications that we
23 give to the customers. We also send them
24 beta equipment.

1 Q. And this is all part of the sales process?

2 A. These are not insignificant purchases,
3 ranging from 50 to a million dollars,
4 50,000 to a million. They want to test
5 it, see it, preview it, and that begins
6 well before any general availability.

7 Q. Okay. Are there customers who are not
8 part of that process?

9 A. Yes.

10 Q. And how are they aware of the products
11 being available on the market?

12 MR. HOSP: Object to the form.

13 A. They could become aware through blog
14 posts, through their partners, which again
15 resellers in this case, word of mouth.

16 Q. And you said you did advertising, is that
17 right?

18 A. Some.

19 Q. What does that typically -- is it
20 television commercials?

21 A. A lot of online ads which are, you know,
22 the content is ours, not necessarily the
23 execution of the ad.

24 Q. Okay. Did you do online ads for Unity?

1 MR. HOSP: Object to the form.

2 A. Again, that is outside of my direct
3 responsibility. It is something we create
4 the content, launch team; there is another
5 group that does the actual advertising
6 portion.

7 Q. Are you aware of online ads that advertise
8 Unity?

9 A. Yes.

10 Q. Do you know when those ads started
11 running?

12 A. I can't recall the specific date.

13 Q. Okay. Do you have an idea?

14 A. Probably close to the external
15 announcement at EMC World.

16 Q. And for Unity, that was on May 2nd, 2016,
17 is that right?

18 A. Correct.

19 Q. Okay. So is EMC, is it fair to
20 characterize EMC as the biggest player in
21 this space, in the midrange storage space?

22 A. Yes.

23 Q. Okay. When did EMC first learn that
24 Nexsan intended to use the Unity mark?

1 A. I am not 100 percent sure. I think it
2 really is to capture that point in time
3 forward mostly. It is not a what has been
4 done. It is what is going ahead slide.

5 Q. Do you see the box April 11th, orderable
6 in My Quotes.

7 A. Yes.

8 Q. What does that mean?

9 A. That means the systems are, through our
10 normal transactional process online, can
11 be ordered through the system called My
12 Quotes.

13 Q. So that is how people place an order for
14 the product?

15 A. That is one way to place an order.

16 Q. What are the other ways?

17 A. Well, one, another way we ship a system is
18 through the beta process. That is kind of
19 there is an informal and a formal way to
20 order a product. This is the formalized
21 way to do it, large scale way to do it.

22 Q. If you participate in a beta, do you have
23 to return the product after the beta ends?

24 A. To the best of my knowledge, no, you do

1 not.

2 Q. Okay. Is it typical for someone to order
3 a product through beta testing?

4 A. Order it through beta testing?

5 Q. You testified that there are two ways to
6 order, one way is through My Quotes, and
7 the other is through beta testing.

8 A. I think I said through an informal process
9 and then we ship the systems as part of
10 beta.

11 Q. What is the informal process?

12 A. There are people that have access to
13 people in manufacturing and directly
14 through engineers that we can give them a
15 system prior to its availability in My
16 Quotes.

17 Q. How often does that happen?

18 A. I can't speak to how often, but I've
19 witnessed it multiple times.

20 Q. Did that happen for Unity?

21 A. To the best of my knowledge, it may have.

22 Q. That sounds like an I don't know. Is "I
23 don't know" a fair characterization of
24 that answer?

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1 enablement that you gave them, are they
2 allowed to disclose it to EMC customers
3 not subject to confidentiality
4 obligations?

5 MR. HOSP: Objection to the form.

6 A. Sorry. That was long.

7 Q. Yes.

8 A. Can you say that again?

9 Q. Let me just reread it.

10 Information that you create that
11 the sales teams give to the partners, are
12 they allowed to share it with the partners
13 only if the partners have a
14 confidentiality agreement with EMC?

15 MR. HOSP: Objection to the form.

16 A. Sometimes.

17 Q. Mainly?

18 A. We try to do an NDA.

19 Q. So you have NDA's with your partners?

20 A. Yes.

21 Q. Okay. And you want them to keep your
22 information confidential?

23 MR. HOSP: Objection to the form.

24 A. It depends on what information.

1 Q. Generally, the purpose of the NDA is to
2 keep information confidential?

3 MR. HOSP: Objection to the form.

4 A. Sometimes, because it is a large and long
5 selling process, we do want some customers
6 to know about it.

7 Q. The ones you are presenting to?

8 A. Yeah.

9 Q. Yes. And those, those present,
10 presentations are subject to NDA
11 agreements?

12 MR. HOSP: Objection.

13 A. Sometimes.

14 MR. HOSP: Objection to the form.

15 THE WITNESS: Sorry.

16 MR. HOSP: That is all right.

17 Q. Do you see the column marked Sales
18 Accreditation?

19 A. Yes.

20 Q. What does that refer to?

21 A. It looks like the availability of sales
22 accreditation.

23 Q. What is sales accreditation?

24 A. It is a required training course for every

1 Q. What do you understand embargo to mean in
2 the context of the launch of Unity?

3 MR. HOSP: Objection to the form.

4 A. When I do -- when I have used embargo, it
5 is typically in relation to a press
6 briefing, given them pre information, you
7 ask them not to publish until a certain
8 time. That is how I know the word
9 "embargo". So using it here, it just
10 doesn't make sense to me.

11 Q. Did you ask Chris what he meant by it?

12 MR. HOSP: Objection to form.

13 A. No, we didn't have that conversation.

14 Q. So he said -- is it fair to characterize
15 it that he said there is going to be an
16 embargo between January and February of
17 2016 on use of Unity with partners?

18 MR. HOSP: Objection to form.

19 A. He may have said something to the person
20 creating this slide, but it was not
21 communicated directly to me that that was
22 the case.

23 Q. Are you aware of it taking place?

24 A. What part?

1 like we have done. No partners who then go
2 tell other vendors about our news. The
3 precedent was already set last year with
4 Stefan and I. Need someone to blame,
5 blame it on me. SE workshops are clear.
6 Unity content is coming out. Rather that
7 than un-invite partners. No core sales,
8 no partner enabler nor core -- no core SE
9 enablement until April unless a specific
10 exception given via Chris/Jeff. Best I
11 can offer right now."

12 Q. Okay. So what was the purpose of writing
13 this email?

14 A. We had already done sessions as part of,
15 again, the long selling process. There was
16 this thing called -- I forget -- CTUG is
17 one of them, Guru U, and there are these
18 customer facing sessions through December,
19 January, February. Some of those sessions
20 had customers in the room. Some had
21 partners. Some were NDA, some were not.
22 Again, there was a little bit of mixed
23 directives, let's say, from above on what
24 we should be doing, and this is a pull

1 back away temporarily from the, from the
2 outbound message.

3 Q. So when you said Unity content is coming
4 out, you meant pull it out of the outbound
5 message?

6 A. And in context, let me just see, that
7 again is very specific to this particular
8 session.

9 Q. Understood. But that is what this means?

10 A. Okay. That is what that means for this
11 timeframe.

12 Q. Okay. And you said in your answer that
13 there were customers who were receiving
14 information not subject to NDA. You said
15 some of them did and some of them did not
16 have an NDA.

17 Can you recall any customers that
18 did not have an NDA?

19 A. Specifically, I can't think of a specific,
20 but I do recall we did events, the CTUG,
21 Guru U. We did executive briefings to
22 customers and the assumption was always
23 yeah, they probably have an NDA.

24 Q. Okay. So you said that you were trying to

1 A. Just didn't seem like it was a realistic
2 decision because we had already been
3 pretty outbound with the name.

4 Q. But you don't -- do you recall discussing
5 with him that the name Unity had already
6 been used publicly?

7 MR. HOSP: Objection. Asked and
8 answered.

9 A. I think I already said that, yeah.

10 Q. Okay. Do you know if any members of your
11 team spoke with him about the fact that
12 Unity had already been, a public use of
13 Unity had already been made?

14 A. There was clear evidence that we had
15 already used Unity.

16 Q. Okay.

17 A. I am not sure if anyone directly told him.

18 Q. Are you -- strike that. Do you know if he
19 had seen the blog post?

20 A. Not 100 percent sure.

21 Q. You said there was clear evidence that you
22 had already used Unity. Is that correct?

23 A. Sure.

24 Q. What clear evidence other than the blog

1 post was there?

2 A. There was plenty of customer
3 presentations, there were partner
4 presentations. A lot of it happened
5 before he came into that role.

6 Q. Can you think of any uses that were
7 generally available to the public other
8 than the blog post?

9 MR. HOSP: Objection to the form.

10 A. It depends, I guess, how you define
11 public, right. We did discuss with
12 customers.

13 Q. Sure. I guess then I will focus on
14 generally available since that is EMC's
15 term for its launch. Was there any
16 generally available uses of Unity?

17 MR. HOSP: Objection to the form.

18 A. Generally available means the product is
19 now, you know, just that is its, that is
20 its external launch date essentially.

21 Q. I guess I should clarify that. We don't
22 believe the blog post was use of the
23 trademark, but for the context of this
24 questioning I am going to take your answer

1 Q. Now, the SAS Summit were internal
2 employees, is that right, that you showed
3 this document to at SAS?

4 A. Yes. I believe so, yup.

5 Q. Okay. And it does say internal use only,
6 is that right?

7 A. It does say that.

8 Q. Can I bring your attention to the last
9 page?

10 A. Sure.

11 Q. Can you tell me what Oberon is?

12 A. Oberon is a name used to describe the
13 enclosure at the box itself. So Unity has
14 always been the top level, you have
15 Oberon, and you have Thunderbird.
16 Sometimes you will see that referred to as
17 the software and the hardware.

18 Q. Oberon being the hardware?

19 A. Oberon is the hardware.

20 Q. Okay. And is there a correlation between
21 the VNX line of products on the left and
22 the Oberon line of products on the right?

23 MR. HOSP: Objection to the form.

24 A. Well, from what I see, there is arrows and

1 MR. HOSP: Objection to the form.

2 A. That would be part of the beta process
3 again.

4 Q. Okay. So the first distribution of Oberon
5 hardware was during the beta testing?

6 A. Again, to my knowledge.

7 Q. Okay.

8 A. It may have been backroom deals, whatever.

9 Q. In the beta testing, did the term Unity
10 appear on the Oberon hardware?

11 MR. HOSP: Object to the form.

12 A. I don't believe so.

13 Q. Okay. The word Unity appears on EMC Unity
14 hardware now though, correct?

15 A. Yeah. It is a bezel.

16 Q. Okay. Which means just sort of a --

17 A. A snap-on faceplate.

18 Q. And it is at the lower left, is that
19 right?

20 A. Yup.

21 Q. Do you recall? And it says just Unity?

22 A. It says Unity.

23 Q. Okay. Do you know when the term Unity
24 first appeared on the hardware?

1 A. No, I don't. I think it was probably
2 close to external launch.

3 MR. ABREU: Okay. Okay. This
4 will be Exhibit 6.

5 (Document marked as Exhibit 6 for
6 identification.)

7 MR. HOSP: Thank you.

8 (Witness perusing document.)

9 Q. I will give you a minute to review it.

10 A. Okay.

11 Q. Have you seen the document before?

12 A. I may have seen it like in a file folder.
13 I don't think I opened it and flipped
14 through it.

15 Q. Do you know who Susan Sharpe is?

16 A. Yes.

17 Q. Who is she?

18 A. She is a product management person that I
19 work with.

20 Q. Do you -- okay. You work with her?

21 A. Yup.

22 Q. Do you have any reason to doubt the
23 authenticity of this document?

24 MR. HOSP: Objection.

1 removing the video now?

2 A. Uh-huh.

3 Q. Why did you ask VIMEo to remove the video?

4 A. I think it was a person that published it
5 to VIMEo, we asked.

6 Q. Okay. So why did you ask them to have it
7 removed?

8 A. They just weren't part of our, call it,
9 inner circle that we wanted to make aware.

10 Q. Were you publishing videos to VIMEo about
11 Unity on your own at this time?

12 MR. HOSP: Objection to the form.

13 A. Not me personally. I don't think EMC did
14 either.

15 MR. ABREU: Okay. John, can I
16 have 14779. Thanks. This will be [Exhibit](#)
17 8.

18 (Document marked as [Exhibit 8](#) for
19 identification.)

20 THE WITNESS: Thank you.

21 Q. I will just give you a minute to review
22 it.

23 A. Yeah, it is a thick one.

24 Q. Yeah. Some of the slides have come up

1 record?

2 A. "The plan is still no sales, presales
3 enablement until April 1st. None in Q1.
4 We need to finish the quarter as strong as
5 we can."

6 Q. What does she mean by that?

7 A. Still no sales, presales enablement? So
8 there had been, right, previous usage of
9 the name, right, in public. At this
10 point, we bounced around and via next, as
11 a product line, we were concerned about
12 its revenue. So earlier in the year, I am
13 sorry, Q4 of '15, we -- it was full force,
14 right, public. This goes back to people
15 trying to pull it back.

16 Q. Can I ask you to comment on her statement,
17 "We need to finish the quarter as strong
18 as we can", what did she --

19 MR. HOSP: Objection to the form.
20 You can answer.

21 A. That is back to revenue --

22 Q. Can you explain that to me?

23 A. -- of the existing product line.

24 Q. Okay. How would launch of Unity affect

1 revenue of the existing product line?

2 A. It could potentially have a negative
3 effect on it.

4 Q. Can you explain how?

5 A. People know the new thing is coming, they
6 could potentially stall the deal of the
7 existing product.

8 Q. Okay. So you are trying to sell in Q1,
9 2016, she is concerned about sales of the
10 existing product being strong?

11 A. Uh-huh.

12 Q. Okay. And if people knew about Unity, it
13 is possible that they would not be as
14 strong?

15 MR. HOSP: Objection to the form.

16 A. It depends who you define as people. I
17 mean we, again --

18 Q. But that is generally what she is getting
19 at here, is that right?

20 MR. HOSP: Objection to the form.

21 A. I think that is what she is implying.

22 Q. Okay.

23 A. She may not necessarily be correct.

24 Q. And you said in your reply, "This looks

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1 MR. DeBLOIS: Why not?

2 MR. ABREU: Yes.

3 MR. HOSP: Why not?

4 MR. DeBLOIS: It is clearly
5 within the scope.

6 MR. HOSP: It was not within the
7 scope of what was agreed to by the parties
8 and ordered by the Court in terms of what
9 was supposed to, what this exercise was
10 supposed to be. And quite frankly, while
11 I am fine with it and you guys can have
12 your seven hours, the notion that this
13 deposition you are planning on taking
14 seven hours is a little ridiculous. We
15 can walk through each and every document,
16 but it does not change the facts and the
17 reality.

18 Now, in terms of what this
19 process was supposed to be, was supposed
20 to be about first uses. We have given you
21 stacks of evidence of first uses that far
22 predate the application. The notion that
23 this litigation is still ongoing is a bit
24 offensive. That said --

1 Dave. Thanks.

2 MR. HOSP: Okay.

3 MR. ABREU: Let's continue with
4 the question.

5 Q. Did the original VNXE contain a C4 Unity
6 Code Stack?

7 MR. HOSP: You can answer within
8 the scope of your personal knowledge.

9 THE WITNESS: Okay.

10 A. I don't have knowledge of what happened
11 there.

12 Q. Do you know what a code stack is?

13 A. Not necessarily.

14 Q. What does that mean?

15 A. I think this post puts some pictures of
16 code, but I don't have any direct
17 experience with code stacks, no.

18 Q. Do you know what a common kernel is?

19 A. Not necessarily, no.

20 Q. There is discussion about VNXE as a single
21 LINUX-based kernel that unifies block and
22 file storage.

23 Do you know what block and file
24 storage is?

1 Thanks.

2 A. Oh, yup.

3 Q. Can I draw your attention to the page that
4 it says four of six at the bottom. There
5 is a third bullet point, it says the Unity
6 Codebase.

7 A. Okay. Yes, I see it.

8 Q. Can you just read the first sentence?

9 A. "The Unity Codebase in the VNXE is also
10 the right vehicle for making the SDS
11 version of the VNX code stack (for its
12 data services) widely available. It is
13 simpler, it is smaller and its kernel is
14 LINUX and can be redistributed."
15 Parentheses, big parentheses. What the
16 hell?

17 "And therefore, be free of some
18 of the external restrictions that have
19 made the current VNX VM be held under lock
20 and key inside the walls of EMC and VLAP
21 or EMC VLAP."

22 Q. Are you aware of a version of VNXE that
23 did not contain the Unity Codebase?

24 A. Am I aware --

1 MR. HOSP: Objection to the form.

2 A. -- of --

3 Q. Versions of VNXE that did not contain the
4 Unity Codebase?

5 MR. HOSP: Objection to the form.
6 Outside the scope. You can answer within
7 your individual capacity.

8 A. I think Chad takes liberties, and I am not
9 sure what is happening in this, this
10 section right here.

11 Q. Okay.

12 A. It is worded really weird.

13 Q. Do you know what Project Liberty is?

14 A. Yes.

15 Q. What is Project Liberty?

16 A. That was a name we gave towards VVNX.

17 Q. Before -- did you give it the name Project
18 Liberty before VVNX was launched to the
19 general public?

20 A. That was a marketing label, let's call it,
21 that Chris Radcliff said call it Project
22 Liberty.

23 Q. What -- I am sorry. I thought Chris
24 Radcliff joined the team in 2016.

1 agreement?

2 A. Obviously, EMC and it looks like at the
3 top it is Exchange Bank.

4 Q. Have you ever worked with Exchange Bank?

5 A. Not directly, no.

6 Q. Okay. Would a customer execute this type
7 of NDA prior to being presented with
8 information about Unity?

9 MR. HOSP: Objection to the form.

10 A. Sometimes.

11 Q. When we saw references to NDA on your
12 presentation slide deck, this is the NDA
13 that is being referenced, is that right?

14 A. That would be -- I would say we use the
15 term NDA pretty, pretty loosely. We say
16 are you under NDA, if they said yes, okay,
17 you are under NDA.

18 Q. NDA though, even in that usage, do you
19 understand it to mean a nondisclosure
20 agreement?

21 A. I understand it to mean let's keep this
22 between us.

23 Q. Uh-huh. But you don't just say let's keep
24 this between us, you say this is pursuant

1 to an NDA?

2 A. Not in all cases.

3 Q. Okay. What do you do other than that?

4 A. There are multiple instances in 2015 where
5 we just openly referred to Unity as Unity
6 without any preface, without any NDA,
7 without any discussion of confidentiality.

8 Q. Can you think of any of those instances
9 other than the May blog post we have
10 already discussed?

11 A. There were multiple executive briefing
12 center presentations. There was, I
13 believe it was October or November, there
14 was a partner event where we got up in
15 front of a lot of these distributors and
16 partners and said this is Unity, no dot
17 next, no project, no NDA.

18 Q. It is possible those partners had already
19 signed an NDA, is that right?

20 A. I don't -- I am not aware of that.

21 Q. Do most partners sign an NDA?

22 A. I am not aware of that.

23 MR. ABREU: I am just going to
24 enter another exhibit, 21.

1 is what UG is, user group.

2 Q. So who is in attendance?

3 A. Customers, sometimes partners, and
4 sometimes EMC employees that go with their
5 customers.

6 Q. So customers who are not partners?

7 A. End user customers who are not partners.

8 Q. And are in attendance?

9 A. Absolutely.

10 Q. And this took place, and this took place
11 in Oslo?

12 A. Yup.

13 Q. Okay. Are there any other instances on
14 the list that you are aware of where that
15 presentation was not given pursuant to an
16 NDA?

17 A. I can't speak to the process or collection
18 of NDA's for any session here.

19 Q. Can I ask you just a general question
20 about beta testing? How does EMC decide
21 who to pick for beta testing?

22 MR. HOSP: All right. You can
23 answer.

24 THE WITNESS: Do you have to go

1 do your thing?

2 MR. HOSP: Yes.

3 THE WITNESS: Yes.

4 A. EMC decides based on mostly are they
5 qualified to kind of get the equipment and
6 know what to do with it.

7 Q. Okay.

8 A. So they could be existing customers, it
9 could be a prospect, the sales rep could
10 say here is a good candidate.

11 Q. But they have to be qualified is what you
12 said?

13 MS. BRECKMAN: Objection to
14 form.

15 A. Yeah, yeah.

16 Q. Okay. Meaning that -- what does that mean?

17 A. Have to have a person that knows what they
18 are doing to get the stuff and use it.

19 Q. Okay. So unqualified persons or customers
20 could not participate in the beta test, is
21 that --

22 MS. BRECKMAN: Objection.

23 A. That would be -- I don't know what that
24 means, unqualified.

1 Q. I guess it is a logical extension of your
2 comments. Let me just see if I can unpack
3 it.

4 You said that EMC chooses who is
5 going to be in the beta test based on
6 whether or not they are qualified. Is that
7 correct?

8 A. I should probably stop commenting that --
9 the realm of beta testing candidacy and
10 who ends up becoming a beta tester is not
11 in my scope.

12 Q. But not everyone can participate in beta
13 testing, is that correct?

14 A. That is not true.

15 Q. Is it an open beta test?

16 A. It is not an advertised beta test, but it
17 is open.

18 Q. Well, what do you mean by open in that
19 respect?

20 A. If you are a small business and you are in
21 the market for a storage device, you can
22 test it.

23 Q. How would you know that the beta test is
24 ongoing in that situation?

1 it right now. I am just referencing it.

2 A. Okay, okay.

3 Q. After the mention of Unity in that blog,
4 did EMC at any point thereafter start
5 using the term "Unity" in connection with
6 discussions with customers?

7 A. Yes.

8 Q. Okay. When, when did that start to your
9 knowledge?

10 A. Maybe March 2015. But there could have
11 been times before that.

12 Q. Okay. And in what way did EMC begin using
13 the term "Unity" with its customers?

14 MR. ABREU: Objection.

15 A. In what way? So we described it as a set
16 of features and software related to what
17 was going to eventually become what we
18 call Unity today.

19 Q. So would these be customer presentations?

20 A. Could be presentations, yes.

21 Q. And are these presentations in any way
22 part of the sales process?

23 A. Absolutely.

24 Q. How so?

1 A. Well, we start the sales process, because
2 it is an expensive piece of equipment, it
3 starts well before the actual external
4 launch date of a product. You educate
5 them, you tell them what is coming, send
6 them beta equipment which leads into all
7 of the same essential sales process.

8 Q. Okay. So is this -- would you describe
9 this as sort of premarketing for an
10 upcoming product?

11 MR. ABREU: Objection.

12 A. I would describe it that way.

13 Q. Okay. If you'd take a look at [Exhibit 21](#)
14 which is the list of presentations.

15 A. Yes.

16 Q. You are the 30(b)6 on a number of topics
17 for EMC, is that right?

18 A. Yes.

19 Q. Were you in the process of collecting --
20 were you involved in the process of
21 collecting information in preparation for
22 your deposition?

23 A. I did collect some information, yes.

24 Q. Okay. And to your understanding, did

1 people at your direction confirm that the
2 presentations listed in [Exhibit 21](#) were
3 actually given on or about the dates that
4 are indicated?

5 MR. ABREU: Objection.

6 A. This looks to be accurate, so yes.

7 Q. Looking at the second entry here,
8 Presented Unity to customers TAP on March
9 16, 2015, do you see that?

10 A. Yes.

11 Q. That just lists customers. Do you -- are
12 you aware of how many customers were
13 involved in that presentation?

14 A. I'd have to guess. It is probably a
15 minimum of ten, maybe as many as 20.

16 Q. Okay. And looking on page three of four,
17 you mentioned before the presentation of
18 Unity to customers at CTUG.

19 Do you see that?

20 A. Yes.

21 Q. How many customers would have been present
22 at CTUG?

23 A. Each event probably had between 20 to 30
24 customers, and there were multiple events

1 and multiple geographies.

2 COURT REPORTER: Multiple what?

3 THE WITNESS: Geographies.

4 Q. In connection with these presentations, to
5 your knowledge was any indication given to
6 the recipients of these presentations that
7 the term Unity as used to describe the
8 product in question was itself
9 confidential as opposed to the nature of
10 the product itself?

11 MR. ABREU: Objection.

12 A. I don't know. Given the fact that we had
13 used the name publicly, I think it was the
14 contents of and the features we were
15 trying to protect with the NDA.

16 Q. Okay. You testified about the beta testing
17 that was done, correct?

18 A. Yes.

19 Q. Okay. If you would pull up, take a look at
20 [Exhibit 16](#), which is the top of it is the
21 email between Jason Fonseca --

22 A. Yup. And Raf.

23 Q. And Raf. And Raf is at Presidio, is that
24 right?

1 MR. ABREU: Objection.

2 A. No.

3 Q. And I believe you have testified that as
4 of 2015, EMC had used the term "Unity" to
5 refer to its Next Gen product publicly.
6 Is that right?

7 A. Yes.

8 Q. Okay. If I could direct your attention to
9 the MPTA which is [Exhibit 17](#).

10 A. Okay.

11 Q. If you take a look on the first page, in
12 Section 1.2, the definition of
13 confidential information, do you see that?

14 A. I do.

15 Q. And if you look down about halfway, well,
16 it says, it starts out by saying
17 confidential information means, and then
18 it lists what it means.

19 Do you see that?

20 A. Yes.

21 Q. And then do you see a little further down
22 it says, "But shall not include
23 information or material that," and then
24 there are a number of categories.

1 Do you see that?

2 A. Uh-huh. Yes.

3 Q. Do you see a little iv 1(b)?

4 A. Yes.

5 Q. And what does that say?

6 A. It says. "Are or were disclosed by the
7 disclosing party to a third party
8 generally without restriction on
9 disclosure."

10 Q. Okay. And to your understanding, in
11 connection with the marketing of Unity, at
12 this point had EMC disclosed its use of
13 Unity to third parties without restriction
14 on disclosure?

15 MR. ABREU: Objection.

16 A. I believe we did.

17 Q. If you could take a look at [Exhibit 20](#),
18 which is the nondisclosure agreement.

19 A. Okay.

20 Q. And again, if you look at the beginning of
21 this document, in Section 1 there is a
22 definition of confidential information.

23 Do you see that?

24 A. Yes.

1 Q. And again, as you see, there are
2 exclusions to what confidential
3 information means. Do you see that midway
4 down where it says confidential
5 information will not include?

6 A. Yes.

7 Q. Okay. And again, there is iv that
8 indicates that confidential information
9 will not include information that are or
10 were disclosed by the disclosing party
11 generally without restriction on
12 disclosure.

13 Do you see that?

14 A. Yes.

15 Q. Okay. In terms of the information that was
16 contained in the materials that were part
17 of the immediate run up to the May 2nd
18 launch, were there materials apart from
19 the name that actually were confidential
20 within the various different presentations
21 that were being used at that point?

22 MR. ABREU: Objection.

23 Q. For example, price?

24 A. I am sorry. Say that again.

1 Q. For example, did some of those materials

2 --

3 A. Oh, I see.

4 Q. -- include pricing information?

5 A. Yes.

6 Q. And is pricing information confidential
7 information that EMC didn't want to be in
8 the public domain at that point?

9 MR. ABREU: Objection.

10 A. Correct.

11 Q. Okay. Were there details about the
12 specific functioning of the product that
13 were not generally known to the public at
14 that point?

15 MR. ABREU: Objection.

16 A. There were specific features that we
17 wanted to keep.

18 Q. Okay. And so to your understanding, when
19 people use the term embargo, is that
20 information that actually you would have
21 wanted to be out of the public domain
22 until the official launch?

23 MR. ABREU: Objection.

24 A. Those would, again, be things we would

1 save for the press related embargo.

2 Q. Okay. Generally, generally speaking, to
3 your knowledge and understanding as
4 somebody who is in charge of much of the
5 marketing for this product as of -- well,
6 how did beta testers, for example, refer
7 to the product that was ultimately
8 launched as Unity?

9 MR. ABREU: Objection.

10 A. It depends. Many of them knew it as
11 Unity.

12 Q. Okay. And even beyond the beta testers,
13 to your understanding were there people in
14 the industry generally who had heard that
15 there was a product that was Unity?

16 MR. ABREU: Objection.

17 A. Sure.

18 Q. Okay. So at the time of the launch --
19 well, let me back up for a second.

20 You are in charge of marketing,
21 correct?

22 A. Midrange storage marketing.

23 Q. Or you are in charge of the marketing for
24 a certain segment, correct?